



Terms and Conditions

Last Updated: October 10, 2023

These standard Terms and Conditions ("**Terms**"), effective as of the date set forth above, govern the sale of any goods ("**Products**") or provision of related services by Chicago Switchboard, LLC or its corporate affiliates (as set out herein, altogether the "**Seller**") to the person or entity buying such Products or Services (the "**Buyer**").

These Terms shall exclusively govern all sales of Products as well as the performance of any Services by Seller and supersede all terms and conditions contained in any purchase order, order, order acknowledgement form, invoice or other business form now or later submitted by Buyer with respect to such Products or Services (each, a "Purchase Order") as well as any prior written or verbal communications between the parties.

1. THESE TERMS

1.1. **Changes to Terms.** Buyer and Seller expressly agree that Seller may modify these Terms from time to time without notice, and that each request for quote, order, acceptance of Products and/or Services, and payment to Seller by Buyer shall be deemed an acknowledgment and acceptance by Buyer of the Terms then in effect. These Terms, now and as subsequently modified, are incorporated by reference into all documents issued by Seller to Buyer in connection with the sale and/or provision of Products and/or Services.

1.2. **Entire Agreement.** Seller's provision of credit to Buyer, if any, acceptance of any purchase order and/or sale or provision of any Products to Buyer are all expressly conditioned upon Buyer's acceptance of these Terms and Conditions as then in effect. SELLER HEREBY REJECTS ANY TERMS OR CONDITIONS WHICH ATTEMPT TO ALTER, MODIFY OR CHANGE IN ANY WAY ANY PROVISION HEREOF, OR OTHERWISE ATTEMPT TO SUSPEND, CONTRADICT OR ADD TO ANY TERM OR CONDITION CONTAINED HEREIN, AND BUYER HEREBY WAIVES ALL SUCH TERMS OR CONDITIONS; THUS, SUCH SHALL NOT BE BINDING ON SELLER UNLESS EXPRESSLY AGREED TO IN A SEPARATE WRITTEN INSTRUMENT SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE. SELLER OBJECTS TO ANY DIFFERENT, INCONSISTENT, CONFLICTING, SUPPLEMENTAL OR ADDITIONAL TERMS OR CONDITIONS AND HEREBY REJECTS SUCH, WHETHER CONTAINED IN PREVIOUS OR SUBSEQUENT PROPOSALS OR COMMUNICATIONS (WHETHER ORAL OR WRITTEN) FROM OR WITH BUYER OR IMPLIED BY TRADE, CUSTOM, PRACTICE, COURSE OF DEALING OR USAGE IN THE TRADE. BUYER AND SELLER AGREE THAT THESE TERMS AND CONDITIONS, AS MAY BE SUBSEQUENTLY MODIFIED BY SELLER FROM TIME TO TIME, ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE COMPLETE AND FINAL EXPRESSION OF THE TERMS AND CONDITIONS GOVERNING TRANSACTIONS BETWEEN THEM, AND FURTHER AGREE THAT THERE SHALL BE NO "BATTLE OF THE FORMS" AS DESCRIBED IN SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE.

2. PRODUCTS

2.1. Purchase Orders

2.1.1. **Quotes.** All quotes provided to a prospective Buyer are valid for thirty days from the date sent unless otherwise stated in writing. Signed purchase orders must be received within such period (unless otherwise agreed by the parties in writing), or pricing and lead times are subject to change.

2.1.2. **Acceptance.** Seller will endeavor to (i) acknowledge receipt of each Purchase Order issued by Buyer in accordance with these Terms within [two (2)] business days, and (ii) notify Buyer in writing whether Seller accepts or rejects such Purchase Order within [five (5)] business days (where the Purchase Order has been accepted, the "**Seller Acknowledgement**"). If Buyer fails to accept or reject a purchase order within such time, such failure to respond will be deemed a rejection of the Purchase Order. Seller is under no obligation to accept any Purchase Order, provided that where the terms of a Purchase Order are as set out in the related quote then in effect, Seller may only reject such Purchase Order for reasonable cause.

2.2. Orders.

2.2.1. **Process.** Following delivery of the Seller Acknowledgment and entry of the order at the factory ("**Order Entry**"), Seller shall provide to Buyer engineering drawings and other technical documentation related to the Products to be provided pursuant to the Purchase Order ("**Drawings**"). Buyer shall have thirty (30) days to accept or reject such the Drawings. If Buyer remits the Drawings with changes that are not due to Seller error, and the Drawings are not subsequently approved by Buyer within the thirty (30) days, Seller shall have the right to make changes to the pricing and other terms in the Seller Acknowledgement accordingly. If Buyer rejects such changes to the terms of the project, Buyer may cancel the order, subject to all Cancellation Fees below. Failure of the Buyer to return the Drawings to Seller marked as "APPROVED" shall result in the cancellation of the order and the assessment of a Cancellation Fee as set out below.

2.2.2. **Price.** Prices presented in the Seller's price list are subject to change without notice. The price of any Products to be sent to Buyer pursuant to a Purchase Order shall be as stated in the Seller Acknowledgement, provided that all order deadlines (as set forth in the Seller Acknowledgement) are met. If a deadline is not met, or if Seller otherwise experiences any delays not due to Seller's acts or omissions, pricing shall be subject to adjustment in Seller's discretion or as set out in the Seller Acknowledgement.

2.2.2.1. **Input Cost Surcharge.** Seller may upon prior notice to Buyer assess or pass along a surcharge on the price of any Products including, but not limited to, any surcharge predicated upon an increase in the cost of raw materials or energy, all after the date of the applicable Seller Acknowledgment. Such a surcharge will result in an increase in price effective for any Products scheduled for shipment beginning as of the date of notice provided. [If the amount of the surcharge exceeds 15% of the value of the Purchase Order, Buyer shall be entitled to cancel any remaining shipments and shall be responsible to Seller only for those costs actually incurred by Seller for any Products already completed but not yet shipped (in addition to any unpaid amounts due for Products already shipped at the original price).

2.2.2.2. **Taxes.** Seller prices quoted and assessed do not include taxes, duties, or any other governmental fees or levies that may be assessed on the sale of the Products including but not limited to, sales or use tax, but not including income or payroll taxes payable by Seller ("**Taxes**"), all

of which are payable by the Buyer. The Buyer is responsible for all such taxes, duties, and charges resulting from any order and associated purchase and shall indemnify Seller for any costs or other losses arising from the Buyer's failure to remit such Taxes accordingly. Where Seller is required to collect Taxes on an order, Seller shall invoice the Buyer for said Taxes and/or fees according to applicable law, statutes, or regulations unless the Buyer furnishes a tax exemption certificate to Seller prior to Order Entry or has said certificate on file with the Buyer. For purchases originating outside of the United States, any change in foreign exchange rates, taxes, and/or tariffs shall be charged to the Buyer.

2.2.2.3. *Payment Terms.* All invoiced or otherwise due amounts are due and payable no later than 30 days from the date of invoice. Late payments are subject to interest charges at the lower of 1.5% per month, or the greatest amount permitted by law. Invoices for any installment payments become due on the date of shipment. Standard milestone payments for all orders are as follows unless negotiated and signed by the Seller's authorized employee:

For New Customers	Up to 50% Downpayment
Upon Receipt of Seller Acknowledgement	25% of Total Purchase Order Amount
Upon receipt of Drawings for approval	15% of Total Purchase Order Amount
Upon approval of Drawings	20% of Total Purchase Order Amount
Upon Acceptance of Shipment	Total Unpaid Balance

2.2.2.4. *Credit Approval.* Ongoing delivery of all orders is subject to the Buyer meeting the Seller's credit requirements. Failure to meet credit requirements may change payment terms or may result in the Seller's cancellation of the order without penalty. If, in the judgment of the Seller, the financial condition of the Buyer does not justify the terms of payment specified, the Seller may require full or partial payment in advance. If Buyer fails to pay the Seller for products and services, Seller reserves the right to file in its sole discretion any liens, charges, security interests, or similar encumbrances against the applicable property, building, land, or products and services, and Buyer consents to such filings and registrations.

2.2.3. *Telephone Orders.* Orders by telephone are accepted at the risk of Buyer, and shipments made before receipt of written confirmation are for the convenience of Buyer. To avoid the possibility of duplication, Buyer's confirming order must be clearly marked "Confirmation." Confirmation orders not so marked may, at Seller's election, be treated as original open orders.

2.3. Production.

2.3.1. *Witness Testing and Factory Inspection.* Standard factory tests may be witnessed by the Buyer at the Seller's factory for an additional charge of \$2,500 per day (not to exceed eight (8) hours) per Product type. Buyer may final-inspect Products at the Seller's factory for \$500 per day per Product type. Witness tests will add one (1) week to the scheduled shipping date. Seller will notify Buyer fourteen (14) calendar days in advance to schedule witness testing or inspection. In the event Buyer is unable to attend with less than seven (7) days' notice, Seller reserves the right to deem the witness tests waived and shall have the right to ship and invoice Products. Regardless of any such cancellation, Buyer shall be responsible for paying the fees set forth above for all scheduled witness testing (assuming an eight (8) hour day as applicable), payable at the time of scheduling.

2.3.2. *Drawing Approval.* Seller will design the Products in line with, in Seller's judgment, good commercial practice. If at drawing approval Buyer makes changes outside of the design as covered in their specifications, Seller will then be paid reasonable charges and allowed a commensurate delay in shipping date based on the changes made.

2.3.3. *Drawing Re-submittal.* When Seller agrees to do so in the Seller Acknowledgement, Seller shall provide Buyer with the first set of factory customer approval drawing(s) at Seller's expense. The customer approval drawing(s) will be delivered according to the schedule set out in the Seller Acknowledgment. If Buyer requests drawing changes or additions after the initial Drawings have been submitted by Seller, the Seller, at its option, may assess Buyer further drawing charges. Drawing changes required due to misinterpretation or mistake by Seller will be at Seller's expense.

2.4. Delivery and Acceptance.

2.4.1. *Delivery.* Buyer shall make an examination of any Products delivered hereunder immediately upon receipt. Buyer's failure to give written notice of any claim within [three (3)] days after the receipt of such Products shall constitute Buyer's unqualified acceptance of such Products and a waiver by Buyer of all claims with respect to the delivery thereof, including any right to revoke acceptance ("*Acceptance*"). In the event Seller refuses to accept the Products for any reason other than material defects or damage to the Products, such refusal shall constitute a cancellation of the order and Buyer shall be liable to Seller for all Cancellation Fees provided for herein. If the delivery is to be done in installments, Seller reserves the right to deliver such installments with reasonable deviation in quantity per installment.

2.4.1.1. *Damage in Transit.* Except in the event of F.O.B. destination shipments, the Seller will not participate in any settlement of claims for concealed damage or any other damage done to the Products in transit. It is the responsibility of the Buyer to procure insurance, if desired, on the Products while they are in transit. When a shipment has been made on an F.O.B. destination basis, the Buyer must unpack immediately and, if any damage is discovered, must not move the Products from the point of examination, retain shipping container and packing material, notify the carrier in writing of any apparent damage, notify Seller representative within 24 hours of delivery, and send Seller a copy of the carrier's inspection report.

2.4.1.2. *Material Defects.* If Buyer refuses delivery of the Products on the basis that there is a material defect in the Products, Buyer shall immediately inform Seller of such claim, and shall provide photographic or similar evidence related to the same. Provided that Seller agrees the provided evidence reasonably corroborates the Buyers' accusations of defect, and does not reasonably suggest damage in transit, Buyer shall return the Products back to the Seller facility in accordance with Seller's shipping instructions. Buyer may not return, repair or dispose of any allegedly defective or nonconforming Products without Seller's consent. Products returned must be returned in the same condition as when received by Buyer. Upon receipt of the Products, Seller shall inspect the Products and, if applicable, attempt to recreate the conditions under which the defect(s) were discovered. If Seller is able to recreate the defect, or otherwise acknowledges the existence of said defect, Seller shall treat such claim by the Buyer as a claim pursuant to the Limited Product Warranty set forth herein and shall proceed accordingly. Seller shall also reimburse Buyer for reasonable costs incurred in returning the Products in accordance with Seller's shipping instructions. Returned Products which are found by Seller to be free from defect and to conform to specifications or otherwise not suffer from a defect or nonconformity which originated with Seller shall be held at Seller's facility for Buyer's disposition. Should no such disposition instructions be received from Buyer within thirty (30) days of notice of Seller's finding, Seller may do with the Products as it wishes, including, but not limited to, selling such for its scrap value; provided that Buyer is given a credit toward the amount owing to Seller for such Products in the amount of such scrap value.

2.4.2. **Freight.** Freight policy will be included on the Seller Acknowledgment with one of the following terms. The term “**freight prepaid**” means that freight charges will be prepaid to the accessible common carrier delivery point nearest the destination for shipments unless noted differently on the Seller Acknowledgement.

FOB – P/S – Frt./Ppd. & Invoiced	Products are sold F.O.B. point of shipment freight prepaid and invoiced to the Buyer.
FOB – P/S – Frt./Ppd. and Allowed	Products sold are delivered F.O.B. point of shipment, freight prepaid, and included in the price.
F.O.B. Destination – Frt./Ppd. and Allowed	At Buyer’s option, Seller will deliver the Products F.O.B. destination freight prepaid and 2% will be added to the net price.

2.4.2.1. **Buyer Requirements.** If the Buyer specifies a special method of transportation, type of equipment, routing/rerouting, or delivery requirements, the Buyer shall pay for any special freight and handling charges. When freight is included in the price, no special allowance will be made instead of transportation if the Buyer accepts shipment at Seller’s factory, warehouse, or otherwise supplies its transportation.

2.4.2.2. **Risk.** Unless otherwise agreed to by Seller, risk of loss or damage passes to Buyer upon collection of the products at the Seller’s facility. In no event, shall Seller have any liability to Buyer or any third party for any (i) damage to, or loss of, any vehicle used to carry Products purchased by Buyer from Seller, whether such vehicle belongs to Buyer or a third party, or to any other vehicle belonging to a third party; (ii) damage to, or loss of, the Products purchased by Buyer from Seller or to a third party’s property (real or personal); (iii) injury to any person (whether the driver of the vehicle carrying the Products or an unassociated third person); or (iv) any other loss of any kind, resulting from a failure by Buyer or a freight carrier to properly secure a load of Products or flag or otherwise mark for transportation such Products purchased from Seller and transported from Seller’s facility in Buyer’s vehicle or on a vehicle belonging to a freight carrier. To the fullest extent permitted by law, Buyer shall, at Buyer’s sole cost and expense, indemnify, defend, release and hold harmless Seller, and its officers, directors, agents and/or employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees resulting, in whole or in part, from any failure by Buyer or a third party freight carrier to properly secure a load of Products or flag or otherwise mark for transportation such Products purchased from Seller and transported from Seller’s facility in Buyer’s vehicle or on a vehicle belonging to a freight carrier, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorney’s fees.

2.4.3. **Installments.** Unless Seller expressly agrees in a separate written document, Seller shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure of Buyer to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for remaining installments.

2.4.4. **Delay.** Unless specifically agreed to by Seller in the Seller Acknowledgement, Seller does not guarantee any certain date of delivery and Seller shall not be liable to Buyer for any losses, costs, damages, charges or expenses incurred by Buyer or any other person or entity arising directly or indirectly out of a failure to deliver on any particular date, nor will any delay entitle Buyer to terminate or rescind its purchase unless such delay exceeds one hundred twenty (120) days. Buyer’s right, under the Uniform Commercial Code (the “**UCC**”), to reject due to delay in delivery is waived unless notice thereof is presented to Seller in writing within five (5) days after delivery.

2.4.5. **Force Majeure.** Seller reserves the right to defer delivery, to cancel the order or reduce the volume of Products delivered, all without liability of any kind whatsoever to Buyer, if Seller is prevented from or delayed in the carrying on of its business due to causes beyond Seller’s control, including, without limitation, strikes, lockouts or other labor difficulties, floods, fires, earthquakes, hurricanes or other unusually severe weather conditions, embargoes, war or other outbreak of hostilities, pandemics or other major health events, acts of terrorism, acts of God, acts of Buyer, market shortages, unavailability of Products or necessary materials, supplies or transportation services, any shift in raw material costs that prohibit or materially reduce the supply of Products or necessary materials or supplies from Seller’s suppliers, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, governmental acts and regulations or other contingency the non-occurrence of which was a basic assumption on which the purchase order was accepted. In such a case, Seller shall have no obligation to purchase substitute goods or make other substitute arrangements to complete delivery to Buyer or to ship substitute goods from any other facility.

2.5. **Cancellation.** Except as set forth below, Buyer may not cancel or modify an order in whole or in part without Seller’s prior written consent, to be given or denied in Seller’s sole and absolute discretion, and which Seller may condition upon an adjustment of price and/or other terms and Buyer’s reimbursement to Seller of its costs and damages in connection with the order and its cancellation.

2.5.1. **Standard Cancellation Fees.** Purchase Orders may be terminated in writing by the Buyer with thirty days’ notice to the Seller and upon payment of [all actual costs incurred in furtherance of the Purchase Order] [AND] a cancellation fee calculated as a percentage of the total amount to be billed for that particular Purchase Order according to the progress of production ([together], the “**Cancellation Fee**”) as set out below:

Factory Order Entry Complete	15% of Total Purchase Order Amount
Drawings for Approval Submitted	25% of Total Purchase Order Amount
Up to One Week after Release	50% of Total Purchase Order Amount
Factory Construction Drawings Received by Buyer	80% of Total Purchase Order Amount
Order is released to Shop Floor	100% of Total Purchase Order Amount

2.5.2. **Cancellation by Seller.** Seller shall have the right to cancel any Purchase Order at any time by written notice for any breach of these contract terms, including but not limited to material delays by Buyer, as well as any insolvency or bankruptcy due to state or federal proceedings. In the event Seller cancels an order for breach of these Terms, Seller shall be entitled to payment of all noncancellable costs incurred in furtherance of the order prior to such cancellation or reasonably required to wrap up such order.

2.6. **Delays.** For any order held, delayed, or rescheduled at the request of the Buyer beyond the project dates set forth in the Seller Acknowledgement, Seller may, at its sole option, (1) require payment to be based on any reasonable basis, including but not limited to the contract price, and any additional expenses, or cost resulting from such a delay; (2) store Products at the sole cost and risk of loss of the Buyer; and/or (3) make changes to the price terms of the project. Payment for such price, expenses, and costs, in any such event, shall be due by Buyer within thirty (30) days from the date of Seller’s invoice. Any order so held delayed or rescheduled beyond six (6) months will be treated as a Buyer cancellation.

2.7. **Limited Product Warranty.** Seller warrants that the Products manufactured by it: (a) will conform to Seller's applicable specifications set forth in the approved Drawings and Seller Acknowledgment without regard to any characterization of the Products elsewhere including, but not limited to, Seller's then current stock list or other reference list, on its website, in price lists or other information, and (b) will, in normal use, be free from failure due to material defects in workmanship or material (the "**Limited Product Warranty**") for one (1) year from the date of installation of the Product or eighteen (18) months from the date of shipment of the Product, whichever occurs first (the "**Warranty Period.**") The warranty in this Section is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on Seller's part, and Buyer agrees that no oral or written representation, guaranty or warranty made by Seller, its employees, agents or representatives, other than as expressly set out in these Terms, shall be binding on Seller. SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES AND AGREES THAT BUYER TAKES SOLE RESPONSIBILITY FOR THE SELECTION OF AND SPECIFICATIONS FOR THE PRODUCTS AND THEIR FITNESS FOR ANY PURPOSES INTENDED BY BUYER OR BUYER'S CUSTOMER(S).

2.7.1. **Exclusions and Limitations.** This Limited Product Warranty shall not apply (a) to Products not manufactured by Seller, (b) to Products that have been repaired or altered by anyone other than Seller, or (c) to Products that appear to have been subjected to negligence, accident, or damage by circumstances beyond Seller's control, or improper operation, maintenance or storage, or to other than normal use or service. Except as set forth herein, Buyer shall not be entitled to reimbursement of any costs incurred as a result of exercising its rights under this Limited Product Warranty, including any labor, installation, or other costs associated with replacement or repair of the Products.

2.7.2. **Exclusive Warranty Remedies:** In the event of a breach of any of the warranties set forth above, the sole and exclusive obligation of Seller shall be to repair or replace the defective Products or part of the Products, at Seller's sole discretion. Replacement or repaired Products will be warranted for the remainder of the original warranty period.

2.7.3. **Notice of Claim.** All claims for repair or replacement pursuant to this Limited Product Warranty must be made within 24 hours of Buyer's discovery of a potential claim, during which time the Product shall not be used or otherwise disturbed. All claims must be made no later than the close of the Warranty Period, at the end of such time Buyer forever disclaims any further claims or losses associated with the Products. Buyer shall cooperate in good faith, and provide all reasonable assistance necessary, to enable Seller to make a final determination as to the existence or cause of any alleged defect. Buyer acknowledges and agrees that this limited warranty shall not apply to Seller products or units identified as "Pre-production" units, which Buyer agrees are delivered "AS IS" and without any warranty, or right to recourse or credit of any kind whatsoever against Seller.

2.7.4. **Third Party Products.** Buyer acknowledges and agrees that Products purchased pursuant to these Terms and the Purchase Order may contain, be contained in, incorporated into, attached to or packaged together with the products manufactured by a third party ("**Third Party Products**"). Third Party Products are not covered by the Limited Product Warranty. For the avoidance of doubt, Seller makes no representations or warranties regarding any Third Party Products. Seller shall transfer or assign to Buyer all manufacturer warranties for Third Party Products or, if such transfer or assignment is not completed, shall take all reasonable steps to confer the benefits thereof on Buyer, to the extent permitted by the manufacturer warranty.

2.8. **Purchase Money Security Interest.** In accordance with the UCC, Buyer hereby grants, and Seller hereby retains, a Purchase Money Security Interest ("**PMSI**") in all Products sold by Seller to Buyer, along with any products into which such Products are converted or included by Buyer and the proceeds of sale or other transfer by Buyer of any and all said products or of the Products themselves, until such time as Seller is fully paid all amounts owing by Buyer for such Products, at which time said PMSI shall be immediately released. In the event Seller is not timely paid for any Products, in addition to any other rights to which Seller may be entitled hereunder or at law or equity, Seller shall have all rights granted under the UCC in regard to enforcement of its PMSI. Seller reserves the right to, and Buyer acknowledges and agrees that Seller may, notify any of Buyer's secured creditors of Seller's PMSI. Buyer also authorizes Seller to file with appropriate authorities financing statement(s) and/or other documents deemed necessary by Seller to give notice of Seller's PMSI. Buyer shall take all reasonable steps and cooperate with Seller in perfecting Seller's PMSI.

3. **Services.** From time to time, Seller may provide, subject to a written statement of work ("**SOW**"), certain services related to the Products, such as installation, training, or other maintenance and repair (the "**Services**"). The following provisions govern the provision of such Services.

- 3.1. **Pricing.** Upon receipt of a request for a quote, Seller shall provide an estimated price for the Services on a per-hour basis. Unless otherwise agreed between the parties, Buyer shall pay Seller at the quoted rate per hour for actual hours worked by Seller personnel on the Services, subject to all pricing provisions set forth in Section [2.2.2] and subsections of these Terms. Pricing shall be for labor costs only, and Buyer shall reimburse Seller for such other costs reasonably incurred by Seller in the provision of the Services, including but not limited to, transportation of Seller personnel to and from the Buyer facility,
- 3.2. **Scheduling.** Unless otherwise agreed between the parties, all Services shall be scheduled no later than three (3) months in advance. The date of the Services shall be set out in relevant SOW, but shall be subject to change in Seller's discretion due to normal industry variation and changes in the manufacturing or other schedules related to the Products.
- 3.3. **Cancellation.** If the Buyer cancels the Services with less than sixty (60) days' notice, Buyer shall be responsible to Seller for a cancellation fee in an amount equal to fifty percent (50%) of the total amount payable for the Services, in addition to any actual noncancellable costs incurred by the Seller in furtherance of the Services. If the Buyer cancels the Services with less than fifteen (15) days' notice, Buyer shall be responsible to Seller for the total amount due for the Services, along with any noncancellable costs incurred by the Seller in furtherance of the Services.
- 3.4. **Independent Contractor.** Seller has been retained by Buyer as an independent contractor to perform the Services. Nothing in these Terms shall be construed to impose any obligation on either party of an employee-employer nature or those of a joint venture or similar corporate relationship. BUYER ACKNOWLEDGES AND AGREES THAT NEITHER THE SELLER NOR ITS AFFILIATES, NOR ANY OF ITS OR THEIR AGENTS, REPRESENTATIVES, SUPPLIERS, SERVICE PROVIDERS, CONTRACTORS OR SUBCONTRACTORS IS AN INSURER OF OR AGAINST ANY POTENTIAL OR ACTUAL LOSS OR DAMAGE TO PERSON OR PROPERTY THAT MAY OCCUR IN OR AT THE PREMISES, WHETHER AS A RESULT OF BURGLARY, THEFT, FIRE, SMOKE, CARBON MONOXIDE POISONING, LOSS OF POWER, PHYSICAL HARM TO ANY PERSON, ENTRY IN OR ONTO THE PREMISES, THE CONDUCT OF ANY PERSONS IN OR ON THE PREMISES, OR OTHERWISE.
- 3.5. **Safe Workplace.** Buyer acknowledges and agrees that Buyer has the obligation to provide safe working conditions to Seller personnel or contractors present in Buyer's facility or any facility under Buyer's control or direction. Buyer shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

- 3.6. **Guaranty.** Seller represents and warrants Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services. Seller further warrants that the Services will be provided in a workmanlike manner without gross negligence of willful misconduct on the part of the service provider, consistent with industry standards. SELLER MAKES NO FURTHER WARRANTIES OF ANY KIND RELATED TO THE SERVICES, WHETHER EXPRESS, IMPLIED, OR OTHERWISE AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR ADEQUACY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

4. GENERAL

- 4.1. **Indemnification.** The parties agree that these Terms are intended only to benefit the parties, and so Buyer agrees to protect/indemnify, hold harmless, defend (if requested by Seller) and release Seller and its affiliates, assigns, employees, contractors, and agents (the "**Seller Releasees**") from liability and shall reimburse the Seller or any Seller Releasee for any damages, losses or expenses (including reasonable attorneys' fees and costs) incurred by the Seller or the Seller Releasees in connection with any third-party claims, suits, judgments and causes of action which relate to the Products or the Services the Seller provides, regardless of whether the claim arises under contract, warranty, negligence, or any other theory of liability. Seller agrees to indemnify Buyer from liability and shall reimburse Buyer for any damages or losses arising out of
- 4.2. **Limitation of Liability.** EXCEPT FOR DAMAGES ARISING FROM A BREACH OF [SECTION 3.6], IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES, OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF PRODUCT, LOSS OF REVENUE, PROFITS OR LOSS OF DATA DAMAGES WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF THE SELLER ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED ON CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED.
- 4.3. **Liquidated Damages.** Contracts which include liquidated damage clauses for failure to meet shipping or job completion promises are not acceptable or binding on the Seller unless such clauses are specifically accepted in writing by an authorized representative of the Seller at its headquarters office.
- 4.4. **Compliance**
- 4.4.1. **Foreign Corrupt Practices Act.** Seller, in connection with the sale of Products and/or Services to Buyer hereunder, and Buyer, while acknowledging that Seller is an independent contractor, in connection with any Purchase Order, the purchase of Products and/or Services hereunder and the resale of such, agree to comply with the United States' Foreign Corrupt Practices Act, as amended from time to time (the "**FCPA**"), by not paying, offering or agreeing to pay, authorizing the giving of, or causing to be paid, directly or indirectly, any money or other thing of value to any foreign official (as defined in the FCPA) to obtain or retain business or influence such foreign official in the performance of his or her duties.
- 4.4.2. **Export Control.** The transactions contemplated by these Terms are made subject to any restrictions concerning the export of products or technical information from the United States of America that may be imposed upon Seller or Buyer from time to time by the government of the United States. Buyer agrees that it will not export to any country, directly or indirectly, any technical information acquired from Seller (or products that use such information) for which export the United States government at the time of export would require an export license or other governmental approval without first obtaining such license or approval.
- 4.4.3. **High-Risk Activities.** Unless otherwise agreed in writing by Seller's authorized representative and as specifically stated in the Seller Acknowledgement, Products sold hereunder are not intended for use in or in connection with any nuclear facility or activity, aircraft control or maintenance, or other high-risk facility or activity. Buyer hereby represents and warrants that such Products shall not be used in or in connection with any such activity or facility. If so used, Seller disclaims all liability for any damage, injury, or contamination; and Buyer agrees and indemnifies Seller against any such liability, whether arising because of a breach of contract, warranty, or tort (including negligence) or otherwise. Further certification will be required for use of the Products in any safety-related application in any nuclear facility licensed by the U.S. Nuclear Regulatory Commission.
- 4.5. **Miscellaneous**
- 4.5.1. **Assignment.** Buyer may not assign its rights or obligations hereunder (whether voluntarily, involuntarily, by operation of law, transfer of majority or controlling interest or otherwise) without the prior written consent of Seller. These Terms shall be binding upon Buyer and its successors and permitted assigns.
- 4.5.2. **Severability.** If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms, and the remaining Sections shall continue in full force and effect.
- 4.5.3. **Entire Agreement.** The contract by and between Buyer and Seller for the purchase and sale of Products and/or Services created hereby constitutes the entire agreement by and between Buyer and Seller with regard to the subject matter hereof and shall exclusively determine the rights and obligations of Buyer and Seller with regard to the purchase and sale of Products and/or Services, any prior course of dealing, custom or usage of trade or course of performance notwithstanding, and may not be modified by Buyer except in separate writing signed by an authorized agent of Seller.
- 4.5.4. **Waiver.** Neither any failure nor any delay on the part of Seller in exercising any rights hereunder shall operate as a waiver of any of Seller's rights. Any waiver by Seller of any breach of, or any default under, any provision of these Terms by Buyer will not be deemed a waiver of any subsequent breach or default. All rights and remedies granted herein are in addition to all remedies available at law or in equity.
- 4.5.5. **Controlling Law.** These Terms shall be governed by the laws of the State of Illinois, without giving effect to the conflict of laws principles

thereof. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms or to the Products or Services.

IER Electrical Equipment and Controls, LLC	Controls Engineering & Services, LLC	Chicago Switchboard, LLC	Park Metal Products Company, LLC	Park Electric Company, LLC
5910 Hamblen Dr Humble, TX 77396	210 Barberry Place Loveland, CO 80537	470 W. Wrightwood Ave Elmhurst, IL 60126	19197 Sherwood Detroit, MI 48234	19197 Sherwood Detroit, MI 48234
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